

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.
RAMON ALBERTO UBENCE-ANGULO,
JR.,

Defendant.

CASE NO. 01cr2805-J

Order Denying Motion for Reduction
of Sentence under Rule 35

Defendant Ramon Alberto Ubence-Angulo moves the Court under Fed. R. Crim. P. 35 for an order reducing his sentence. The Court DENIES Defendant's motion.

Defendant was convicted on several counts of possession with the intent to distribute and conspiracy to distribute marijuana. On November 18, 2002, the Court sentenced Defendant to 151 months in custody. Defendant appealed his conviction and sentence, but the Ninth Circuit affirmed. Defendant then filed a motion under 28 U.S.C. § 2255, which the Court denied.

Defendant now moves for reduction of his sentence under Rule 35 of the Federal Rules of Criminal Procedure. Defendant asks the Court to re-examine his 151 month sentence "with a conscious regard for his demonstrated capacity for change . . ." Defendant also points to the disparity between his sentence and the sentence the Court imposed upon his co-defendants. Defendant does not argue the Court imposed an unlawful sentence, but instead asks the Court to re-examine the sentence in the interests of justice.

1 Rule 35 does not authorize the Court to grant the relief Defendant requests. The Court may
2 reduce a defendant's sentence under Rule 35 only to correct a clear error or upon the government's
3 motion based upon defendant's substantial assistance. Fed. R. Crim. P. 35. Neither of these
4 circumstances are present in this case. In addition, although it may be appropriate in certain
5 circumstances to construe a motion under Rule 35 as a motion to correct a sentence under 28
6 U.S.C. § 2255, United States v. Eatinger, 902 F.2d 1383, 1384 (9th Cir. 1980), Defendant has
7 previously filed a motion under § 2255 and he does not argue in his current motion that his
8 sentence was unlawful. Therefore, Defendant's motion is DENIED.

9 **IT IS SO ORDERED.**

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11 **DATED:** May 6, 2008

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IRMA E. GONZALEZ, Chief Judge
United States District Court

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